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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

JUN - 5 2009

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
BANDWIDTH.COM CLEC, LLC, FOR
APPROVAL OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
COMPETITIVE RESOLD LOCAL EXCHANGE,
RESOLD LONG DISTANCE, FACILITIES-BASED
LOCAL EXCHANGE, AND FACILITIES-BASED
LONG DISTANCE TELECOMMUNICATIONS
SERVICES IN ARIZONA.

DOCKET NO. T-20562A-07-0615

DECISION NO. 71117OPINION AND ORDER

DATE OF HEARING: March 18, 2009

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Belinda A. Martin

APPEARANCES: Mr. Michael T. Hallum, Lewis and Roca, LLP, on
behalf of Bandwidth.com CLEC, LLC; and

Ms. Maureen Scott, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the
Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On October 23, 2007, Bandwidth.com CLEC, LLC ("Bandwidth" or "Company"),
filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of
Convenience and Necessity ("CC&N" or "Certificate") to provide competitive resold local exchange,
resold long distance, facilities-based local exchange, and facilities-based long distance
telecommunications services in Arizona ("Application").

2. On November 26, 2007, the Commission's Utilities Division ("Staff") filed its First

1 Set of Data Requests ("Data Requests").

2 3. On November 29, 2007, Bandwidth filed Attachment B to Application.

3 4. On January 18, 2008, Bandwidth filed an Amended Application.

4 5. On January 31, 2008, Bandwidth filed its Response to the Data Requests.

5 6. On July 31, 2008, Bandwidth filed a second Amended Application.

6 7. On August 28, 2008, Bandwidth filed its Supplemental Response to the Data
7 Requests.

8 8. On December 10, 2008, Bandwidth filed its Supplemental Response to Staff's Second
9 Set of Data Requests.

10 9. On January 16, 2009, Staff filed its Staff Report recommending approval of the
11 Application.

12 10. On January 28, 2009, a Procedural Order was filed setting the hearing in the matter for
13 March 18, 2009.

14 11. On February 26, 2009, Bandwidth filed its Affidavit of Publication.

15 12. On March 18, 2009, a full public hearing was held before a duly authorized
16 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Company and
17 Staff appeared through counsel and presented evidence and testimony. No members of the public
18 appeared to give public comments in this matter.

19 13. On March 23, 2009, the Company filed its Notice of Filing Exhibit Under Seal,
20 relating that it had provided to Staff and the Administrative Law Judge a copy of its unaudited
21 consolidated statement of earnings for fiscal year 2008.¹

22 14. Bandwidth is a foreign limited liability company organized under the laws of the State
23 of Delaware and authorized to transact business in Arizona.

24 15. The Company is a wholly-owned subsidiary of Bandwidth.com, Inc. ("Parent
25 Company").

26 16. Staff recommends approval of Bandwidth's Application for a CC&N and its petition

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28 ¹ The exhibit was filed under seal pursuant to a Protective Agreement between Staff and the Company dated October 21, 2008.

for a determination that its proposed telecommunications services should be classified as competitive.

17. Staff further recommends that:

- a. Bandwidth comply with all Commission Rules, Orders, and other requirements relevant to the provision of intrastate telecommunications services;
- b. Bandwidth abide by the quality service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
- c. Bandwidth be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Company is the only provider of local exchange service facilities;
- d. Bandwidth be required to notify the Commission immediately upon changes to Bandwidth's name, address or telephone number;
- e. Bandwidth cooperate with Commission investigations including, but not limited to customer complaints;
- f. Although Staff considered the fair value rate base ("FVRB") information submitted by Bandwidth, the fair value information provided should not be given substantial weight;
- g. Bandwidth be required to offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
- h. Bandwidth be required to offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
- i. Bandwidth's maximum rates for its proposed services should be the maximum rates proposed in its tariffs, and the minimum rates for its competitive services should not be less than Bandwidth's total service long-run incremental costs of providing those services as set forth in Arizona Administrative Code ("A.A.C.") R14-2-1109;
- j. If Bandwidth desires to discontinue and/or abandon its service area, it must provide notice to its customers and the Commission in accordance with A.A.C. R14-2-1107; and
- k. Bandwidth's rates should be classified as competitive.

18. Staff further recommends that Bandwidth comply with the following conditions within the timeframes outlined below or Bandwidth's CC&N should be considered null and void, after due process.

- a. Staff recommends that Bandwidth docket conforming tariffs for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted to the Commission should coincide with the Application.

b. Staff recommends that Bandwidth should procure either a performance bond or an irrevocable sight draft letter of credit equal to \$225,000. The minimum performance bond or irrevocable sight draft letter of credit amount of \$225,000 should be increased if at any time it would insufficient to cover advances, deposits, and/or prepayments collected from the Company's customers. The performance bond or irrevocable sight draft letter of credit should be increased in increments of \$112,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$22,500 of the performance bond or irrevocable sight draft letter of credit amount.

c. Staff recommends that Bandwidth should docket proof of the original performance bond or irrevocable sight draft letter of credit with the Commission's Business Office and copies of the performance bond or irrevocable sight draft letter of credit with Docket Control, as a compliance item in this docket, within 30 days of the effective date of a Decision in this matter. The performance bond or irrevocable sight draft letter of credit must remain in effect until further order of the Commission.

The Commission may draw on the performance bond or irrevocable sight draft letter of credit on behalf of, and for the sole benefit of, the Company's customers if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the performance bond or irrevocable sight draft letter of credit funds as appropriate to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to, returning prepayments or deposits collected from the Company's customers.

d. If, at some time in the future, the Company decides that it wants to collect an advance, deposit, and/or prepayment from its resold long distance customers, Staff recommends that the Company should file a request to collect an advance, deposit, and/or prepayment from its resold long distance customers. Such request should be filed with the Commission for Staff review. Upon receipt of the filing, and after Staff review, Staff will forward its recommendation to the Commission.

e. Staff recommends that Bandwidth abide by the Commission-adopted rules that address Universal Service in Arizona, A.A.C. R14-2-1204(B), requiring Bandwidth to make the necessary monthly payments into the Arizona Universal Service Fund ("AUSF").

Technical Capabilities

19. Bandwidth is authorized to provide various telecommunications services in all states except Alaska and Arizona. The Company anticipates beginning service in Arizona as soon as practicable.

20. Bandwidth does not have any employees in Arizona, but it may in the future.

21. Staff noted that the five key personnel for Bandwidth have a combined total of over 38 years experience in the telecommunications industry.

22. The Company intends to resell local exchange and long distance services in Arizona from Qwest Communications ("Qwest").

23. Customer service will be provided through a toll-free customer service number, as well as through computer access.

24. Given the foregoing, Staff concludes that Bandwidth has the technical capabilities to provide the telecommunications services it seeks to provide in Arizona.

Financial Capabilities

25. Bandwidth will rely on its Parent Company's financial resources for its operations.

26. Bandwidth provided unaudited financial statements of its Parent Company for the twelve months ending December 31, 2007. This financial statement lists total assets of \$11.7 million, total negative equity of \$1.6 million, and a net loss of \$4.1 million.

27. Bandwidth's proposed tariff states that the Company will not collect advances, deposits or prepayments from its customers. Therefore, Staff concludes that the Company should not be required to provide a performance bond for its resold long distance telecommunications services.

28. For the Company's remaining telecommunications services, Staff recommends that Bandwidth be required to obtain a performance bond or an irrevocable sight draft letter of credit, as described in Finding of Fact No. 18, above, in order to protect Arizona customers.

29. Pursuant to A.A.C. R-14-2-1107, if Bandwidth desires to discontinue service in Arizona, it must file an application with the Commission and notify its customers and the Commission sixty days prior to filing the application to discontinue service.

Rates and Charges

30. Pursuant to A.A.C. R-14-2-1109, Bandwidth may charge rates for services that are not less than its total service long-run incremental costs of providing service.

31. Information provided to Staff projected Bandwidth's FVRB to be zero within twelve months of beginning its operations.

32. Given the competitive markets in which the Company will operate, Bandwidth's FVRB may not be useful as the sole determinant of rates.

33. Bandwidth's proposed rates are for competitive services. In general, rates for

1 competitive services are not set according to the rate of return regulation.

2 34. Based on Staff's review, Bandwidth's proposed rates are comparable with other
3 competitive local carriers, local incumbent carriers, and major long distance carriers operating in
4 Arizona.

5 35. FVRB should not be given substantial weight in this analysis.

6 36. Bandwidth's proposed rates are just and reasonable and should be approved.

7 **Local Exchange Carrier Specific Issues**

8 37. Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, Bandwidth will make
9 number portability available to facilitate the ability of customers to switch between authorized local
10 carriers within a given wire center without changing their telephone number and without impairment
11 to quality, functionality, reliability or convenience of use.

12 38. In compliance with A.A.C. R14-2-1204, all telecommunications service providers that
13 interconnect into the public switched network shall provide funding for the AUSF.

14 39. Bandwidth will contribute to the AUSF as required by the A.A.C., and make the
15 necessary monthly payments as required under A.A.C. R14-2-1204(B).

16 40. In Commission Decision No. 59421 (December 20, 1995) the Commission approved
17 quality of service standards for Qwest which imposed penalties due to an unsatisfactory level of
18 service. In this matter, Bandwidth does not have a similar history of service quality problems, and
19 therefore the penalties in that decision should not apply.

20 41. In the areas where Bandwidth is the only local exchange service provider, Bandwidth
21 is prohibited from barring access to alternative local exchange service providers who wish to serve
22 the area.

23 42. Bandwidth will provide all customers with 911 and E911 service where available, or
24 will coordinate with ILECs and emergency service providers to facilitate the service.

25 43. Pursuant to prior Commission Decisions, Bandwidth may offer customer local area
26 signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or
27 unblock each individual call at no additional cost.

28 44. Bandwidth must also offer Last Call Return service, which will not allow the return of

1 calls to the telephone numbers that have the privacy indicator activated.

2 **Complaint Information**

3 45. Bandwidth has not had an application for service denied, or revoked in any state, and
4 there have been no formal compliant proceedings and no civil or criminal proceedings involving
5 Bandwidth.

6 46. Staff contacted the Public Utilities Commissions in eleven states where the Company
7 is authorized to provide telecommunications services to inquire about any customer complaints and
8 found that no customer complaints have been filed against Bandwidth.

9 47. None of Bandwidth's officers, directors or partners have been involved in any civil or
10 criminal investigations, or formal or informal complaints, and none of its officers, directors or
11 partners have been convicted of any criminal acts in the past ten years.

12 48. According to Staff, the Consumer Services Section of the Utilities Division reported
13 that no consumer complaints, inquiries, and opinions were filed against the Company from January 1,
14 2005, through December 17, 2008. The Corporations Division reported that Bandwidth is in good
15 standing. Additionally, the Company does not have any outstanding compliance items or
16 delinquencies.

17 **Competitive Services Analysis**

18 49. Bandwidth has requested that its telecommunications services in Arizona be classified
19 as competitive. Bandwidth's proposed services should be classified as competitive because there are
20 alternatives to the Company's proposed services; ILECs and large facilities-based interexchange
21 carriers hold a virtual monopoly in local exchange markets and in the interLATA interexchange
22 market; Bandwidth will have to convince customers to purchase its services; Bandwidth has no
23 ability to adversely affect the local exchange or interexchange market as several CLECs and ILECs
24 provide local exchange and interexchange services; and Bandwidth therefore will have no market
25 power in those local exchange markets or interexchange markets where alternative providers to
26 telecommunications services exist.

27 50. Staff's recommendations are reasonable and should be adopted.
28

CONCLUSIONS OF LAW

1. Bandwidth is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §40-281 and 40-282.

2. The Commission has jurisdiction over Bandwidth and the subject matter of the Application.

3. Notice of the Application was given in accordance with the law.

4. A.R.S. §§ 40-282 allows a telecommunications company to file an application for a CC&N to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Bandwidth to provide the telecommunications services set forth in its Application.

6. Bandwidth is a fit and proper entity to receive a CC&N authorizing it to provide competitive resold local exchange, resold long distance, facilities-based local exchange, and facilities-based long distance telecommunications services in Arizona, subject to Staff's recommendations set forth herein.

7. The telecommunications services that Bandwidth intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Bandwidth to establish rates and charges that are not less than the Bandwidth's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations are reasonable and should be adopted.

10. Bandwidth's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the Application of Bandwidth.com CLEC, LLC, for a Certificate of Convenience and Necessity for authority to provide competitive resold local exchange,

resold long distance, facilities-based local exchange, and facilities-based long distance telecommunications services in Arizona is hereby granted subject to the conditions in Findings of Facts Nos. 17 and 18.

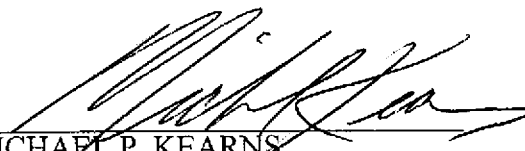
IT IS FURTHER ORDERED that if Bandwidth.com CLEC, LLC, fails to comply with the timeframes stated in Findings of Fact No. 18, herein, the Certificate of Convenience and Necessity granted herein shall be considered null and void, after due process.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

	
CHAIRMAN	COMMISSIONER
	
COMMISSIONER	COMMISSIONER
	
	COMMISSIONER

IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 5TH day of JUNE, 2009.


MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: BANDWIDTH.COM CLEC, LLC

2 DOCKET NO.: T-20562A-07-0615

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